

VZCZCXRO9506
PP RUEHDBU
DE RUEHKV #0929/01 1081449
ZNY CCCCC ZZH
P 181449Z APR 07
FM AMEMBASSY KYIV
TO RUEHC/SECSTATE WASHDC PRIORITY 2036
INFO RUEHZG/NATO EU COLLECTIVE
RUCNCIS/CIS COLLECTIVE
RHMFISS/HQ USEUCOM VAIHINGEN GE//ECJ5//

C O N F I D E N T I A L SECTION 01 OF 02 KYIV 000929

SIPDIS

SIPDIS

E.O. 12958: DECL: 04/18/2017
TAGS: [PGOV](#) [PREL](#) [UP](#)
SUBJECT: UKRAINE: CONSTITUTIONAL COURT PROCEEDINGS RESUME
AMID OPPOSITION PROTESTS

REF: KYIV 922

Classified By: Ambassador for reasons 1.4(a,b,d).

11. (SBU) Summary. Constitutional Court deliberations of the constitutionality of President Yushchenko's April 2 decree dismissing the Rada and calling new elections resumed April 18 after a brief delay caused by opposition efforts to impede access to the court. Opposition leaders Tymoshenko, Kyrylenko, and Lutsenko signaled their strategy in a late April 17 press conference, expressing doubts about a fair outcome and appealing to Yushchenko to dismiss all six judges on the Presidential quota. Early April 18, they sent MPs and thousands of protesters to form a human wall to block access to the Court in hopes of preventing the hearing, an effort which eventually failed, though it led to some unseemly shoving between MPs, judges, and government officials. Once a quorum of judges formed, the court resumed deliberations, with Regions MPs Yuriy Miroshnychenko concluding his presentation on behalf of the coalition, which had begun on April 17. The focus of the day's hearing was the presentation of presidential representative to the Court Volodymyr Shapoval defending the decree. Shapoval argued that CC precedents from 1997, 2000, and 2003 endorsed Presidential powers acting as the guarantor of the Constitution; this supported the contention that the President could employ implied powers as the guarantor of the Constitution to dissolve the Rada. President Yushchenko and Prime Minister Yanukovych once again suggested publicly that a political compromise was still possible prior to a court ruling. For his part, Prosecutor General Medvedko announced he had opened a criminal case targeting claims spread in the media and SBU Chief Nalyvaychenko of bribes to Judge Stanik, as well as against opposition MPs for obstructing access to the Court, before checking himself into a hospital, complaining of heart problems.

12. (C) Comment. The opposition's street action around the Court April 18 takes attention off the April 17 story line of alleged bribery and intimidation they had cited as reasons to worry about the objectivity of a court ruling (reftel) and gives the coalition grounds to claim that the opposition is attempting to obstruct the judicial process. The country's leading journalist Yuliya Mostova told an embassy roundtable April 18 that if there had still been any doubt as to how the Court might rule, BYuT's antics--which forced at least two judges to scale a fence to gain access to the courthouse--probably removed it. The physical space around the Court is very tight for such large crowds and led to the first instances of shoving, albeit between politicians rather than protesters; there will be concerns what successive days might bring if both sides turn out in larger numbers. Regions has vowed to send its entire Rada MP contingent to the Court April 19 to ensure access. End Summary and Comment.

Opposition Claims the Court Lacks Credibility...

13. (SBU) On the evening of April 17, opposition leaders Tymoshenko, Lutsenko, and Kyrylenko gave a joint press conference to express concern about the CC's ability to rule objectively on Yushchenko's decree given allegations of bribery of Reporting Judge Stanik and procedural violations in the assigning of the case (reftel). They charged that the Court's tainted reputation might render its ruling unacceptable to society. They issued a request to Yushchenko to withdraw the six judges on the presidential quota, so as not to allow their presence to "sanctify the political circus" at the Court. (Note: According to the Law on the Constitutional Court, the President cannot unilaterally withdraw a judge. Only the Court itself or the Rada has the right to remove a judge, depending on the reason as listed in Law. End note.)

14. (SBU) Tymoshenko and Lutsenko both argued that the only way to resolve the political crisis was to let the people decide, to hold elections. The trio differed, however, over whether they would recognize a CC ruling. Tymoshenko stated that she would not. In contrast, Lutsenko and Kyrylenko were more nuanced and did not say that they would not accept a ruling; their intent was to warn society about the "possible non-objectivity" of the Court. (Note: Late on April 18, Tymoshenko and Our Ukraine (OU) leader Kyrylenko attempted to provide additional grounds for the Rada's dismissal by announcing BYuT and OU MPs would submit letters of resignation to Yushchenko, though we believe such gestures are symbolic absent a required Rada vote to accept the resignations. Leading journalist Yuliya Mostova told us that BYuT and OU may hold a joint Congress April 19 aimed at forming a joint electoral list. End note.)

KYIV 00000929 002 OF 002

...Then Tries to Block Court Proceedings

15. (SBU) Early on April 18, OU, BYuT, and Lutsenko's People's Self-Defense movement brought a large crowd of protesters to surround the Court and attempt to block access. On previous days, an estimated 500-1000 coalition supporters had picketed the court; embassy observers, the police, and the media estimated over 10,000 demonstrators, mostly representing BYuT and OU, stood shoulder to shoulder in the courtyard and street in front of the Court. The opposition demonstrators were louder and pushier than previous protesters; the human wall succeeded in preventing a quorum of judges for several hours and blocked entrance of an Embassy observer for an additional hour.

16. (SBU) The most aggressive behavior involved MPs. Channel 5 showed video of BYuT MP Volynets attempting to block access of controversial Reporting Judge Stanik, who slapped him. BYuT and Regions MPs then scuffled by the main entrance until police pushed through the crowds and restored order. According to other press reports, two other BYuT MPs blocked CabMin representative Lukash, prompting her to climb a fence to gain access to a back door. OU's press service claimed that four of its MPs had been injured by police action in front of the court, but we only observed police taking normal measures in escorting judges through the crowd.

17. (SBU) As has been the case with most recent protests, nearly all demonstrators for various forces seemed there for the money, based on conversations in the crowd. One out-of-town group carrying Socialist flags told an Embassy staffer they preferred to see Kyiv's sites and asked for directions to the Pechersk Lavra monastery.

Court Resumes: Precedents on Presidential powers

18. (SBU) The Court finally reached a quorum (12 judges) at

1130; 16 judges were present by the end of the morning session. Regions MP Miroschnychenko finished presenting the coalition MP's appeal of Yushchenko's decree. The day's primary focus was the oral arguments of Yushchenko's Court representative Shapoval in defense of the decree. Since many of the justices do not have extensive experience in Constitutional law, Shapoval started with a background on constitutional law and presidential prerogatives. He cited court precedents from 1997, April 2000, and December 2003 in which the Court had upheld the President to be the guarantor of the Constitution in ways which defined presidential powers more broadly than the specific language authorizing presidential action in certain articles. Shapoval argued that the decree to dissolve the Rada for reasons other than the three conditions laid out in Article 90 was therefore justified by the President's implied powers as the guarantor of the Constitution.

Talk of Compromise Continues, amidst PGO accusations

¶9. (SBU) President Yushchenko, in Cardiff, Wales late April 17 to make a (successful) final pitch for Ukraine and Poland to host the 2012 European Football Championships, told journalists that he was willing to suspend his decree if there were political agreement for the Rada to pass a list of legislation enabling early elections to take place in June. At the weekly Cabinet meeting on April 18, PM Yanukovych also indicated that a political compromise was possible, even desirable, before the Court made a ruling on the decree.

¶10. (SBU) In contrast, Prosecutor General Medvedko muddled the waters April 18 before checking himself into the hospital, complaining of high blood pressure and heart problems. Medvedko held a press conference to announce that he had opened a criminal case targeting the spread of rumors in the media and at SBU Chief Nalyvaychenko's press conference about alleged bribes of Judge Stanik that the PGO had determined were baseless. He also said they would investigate opposition MPs, for attempting to obstruct access to the Court. In Medvedko's absence, the Acting PGO will be Viktor Psonka, a former Donetsk prosecutor and father of Regions MP Artem Psonka.

¶11. (U) Visit Embassy Kyiv's classified website:
www.state.sgov.gov/p/eur/kiev.
Taylor